

January 2, 2020

Via Electronic Filing and Electronic Mail

The Honorable Jocelyn G. Boyd
Chief Clerk
The Public Service Commission of South Carolina
101 Executive Drive, Suite 100
Columbia, SC 29210

Re: Docket Nos. 2019-184-E, 2019-185-E, and 2019-186-E

Dear Ms. Boyd:

On December 27, 2019, the Clerk's office notified parties of record in the above referenced dockets that parties wishing to "submit any written comments regarding Commissioner Ervin's consideration of recusal" do so by noon on January 2, 2020. In a prior email, the Clerk's office, at Commissioner Ervin's request, put forth that parties in the above referenced dockets could "express any comments or concerns on the record" regarding this matter at the Commission's business meetings on the specific dockets. Title 58 contains strict prohibitions on communications between Commissioners, and Commission staff, with "persons" absent proper notice to all parties regarding issues before or potentially before the Commission. S.C. Code Ann. § 58-3-260. This prohibition on *ex parte* communications was a fundamental tenet of the reform implemented by Act No. 175 of 2004. Although Title 58 is more restrictive than the Canons of Judicial Ethics in this respect, Canons 1 through 3 of the South Carolina Code of Judicial Conduct as adopted by the Court in South Carolina Appellate Court Rule 501 are instructive as to the guidelines for impartiality and integrity for judges to ensure the same occurs in proceedings. Canon 2 explicitly states that a "judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Additionally, the comments to South Carolina Judicial Canon 1 state in pertinent part that a "judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute... Oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial." There is also ample caselaw holding that the impartiality of the jurist must be maintained and, when called into question, the judge should recuse himself to alleviate any such

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appearance. Johnson Development Associates, Incorporated (“JDA”) and South Carolina Solar Business Alliance, Incorporated (“SCSBA”) (collectively “Intervenors”) crave reference to the applicable statutes, canons, and caselaw in the filing of these comments.

Intervenors understand that Commissioner Ervin corresponded, via email, with a non-party on December 13, 2019. The Communication appears to discuss the issues surrounding the decisions reached by the Public Service Commission of South Carolina (“Commission”) in the above referenced dockets and the rationale for Commissioner Ervin’s position. This communication was made while Petitions for Reconsideration were being drafted by parties in Docket No. 2019-184-E and prior to the issuance of the Order in Docket Nos. 2019-185-E and 2019-186-E. Commissioner Ervin’s defense of the Commission’s ruling in Docket No. 2019-184-E in this communication strongly suggests that he would be unable to fairly consider any petitions for reconsideration. The law is clear that a Commissioner or employee of the Commission may not discuss issues in proceedings with any persons absent proper notice afforded to all parties. S.C. Code Ann. § 58-3-260, *et seq.* The Public Utilities Review Committee (“PURC”) Convened on December 20, 2019, to investigate this alleged *ex parte* communication. From public reports, it is the Intervenors’ understanding that the PURC referred the matter to the South Carolina Attorney General’s Office (“AG”) for investigation.

Due to the facts as currently known to Intervenors and under the applicable law, Intervenors maintain that Commissioner Ervin should recuse himself from any further participation in Docket Nos. 2019-184-E, 2019-185-E, and 2019-186-E. We do not come to this conclusion lightly and recognize Commissioner Ervin’s record of public service. As such, we hope that Commissioner Ervin recuse himself *sua sponte*.

JDA and SCSBA make these comments with the upmost appreciation for the Commission and staff.

Very truly yours,

s/ James H. Goldin
James H. Goldin

s/ Benjamin L. Snowden
Benjamin L. Snowden

Enclosure

Cc: All Parties of Record (via E-mail and Electronic Filing)
Joseph Melchers, Esquire (via E-mail)